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10/580,831	05/26/2006	Keizou Kanzaki	Q94272	8297

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EXAMINER
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NELSON, MICHAEL B

ART UNIT	PAPER NUMBER
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1783

NOTIFICATION DATE	DELIVERY MODE
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08/24/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed on 08/10/10 have been considered but are not persuasive.
2. Applicant first argues that because Matsuguchi uses the destructible pigment layer to increase suppression of the layers underneath of it, the references "purpose and technical features....are entirely different from those of the presently claimed invention." The examiner again maintains that a prior art reference teaching a different goal to be achieved by the same structure as that instantly claimed does not prevent the structure from reading on the claimed structure. There is nothing in the claims that requires that the destructible pigment layer not suppress visual identification of the layers underneath of it. Moreover, the examiner does not see how this intention of Matsuguchi even lies contrary to the intentions represented by the specification in general of the instant application. The critical aspect of the instant invention as the examiner sees it is that the indicator means indicates if the container is open to the consumer. From Fig. 11 it is apparent that the indication means of Matsuguchi would so indicate that the container is open or closed. Applicant has merely summarized the Matsuguchi reference and then concluded that the purpose is different from the instant application. In any case this point is moot because the structure of Matsuguchi reads on the claimed structure of the instant application and the intended use of the structure (i.e. to suppress visual identification of certain layers) does not preclude the reference from reading on the claims.
3. Turning now to the actual structure of the Matsuguchi, the applicant has taken issue with the examiner's interpretation of the "corresponds" language in the claims and while that issue will be addressed below, the examiner would like to point out that even if applicant's

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interpretation is applied to the term, Matsuguchi still reads on the claims. In Fig. 11 of Matsuguchi part 222 is a pigmented part that is larger than and overlaps (i.e. corresponds to) the void portions of layers 223 and 224. With the examiner's interpretation (as explained below) Ewan also reads on this "corresponds to" language but even if applicant's interpretation is applied, the Matsuguchi reference reads on the instant claims.

Turning now to the "corresponds to" language, applicant has taken the position that as their own lexicographer they have defined "corresponds to" to mean occupying the same space (i.e. not the same general space but exactly overlapping). Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). This is not the case in applicant's specification. In fact, in the cited portion the two concepts are merely mentioned in the same sentence and even given a broader standard of what is required to redefine (i.e. narrow) the definition of a term one having ordinary skill would not read that portion of the specification or the specification as a whole and conclude that "corresponds to" is defined by the applicant as "overlapping directly over one another."

In summation, the "corresponds to" language has been correctly interpreted by the examiner based on the broadest reasonable interpretation of one having ordinary skill. Accordingly, the large pigments portions of Ewan correspond to some of the smaller void portions on the opposite surface. Also, Matsuguchi discloses patterns which "overlap directly over one another" and thereby read on the "corresponds to" language in a different way.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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08/13/10